

*... in Sup Ct.*

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
THE CHEMITHON CORPORATION, )  
Appellant, )  
v. )  
PUGET SOUND AIR POLLUTION )  
CONTROL AGENCY, )  
Respondent. )

PCHB Nos. 514, 514-A  
and 562

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
ORDER

These consolidated matters, the appeals of two \$250.00 civil penalties for alleged visual air contaminant violations of respondent's Regulation I and Petition for Declaratory Ruling, came as a formal hearing before the Pollution Control Hearings Board (Walt Woodward, presiding officer, and Chris Smith) in the Seattle facility of the State Board of Industrial Insurance Appeals on December 12, 1974.

Appellant appeared through J. Richard Aramburu; respondent through Keith D. McGoffin. Eugene E. Barker, Olympia court reporter, recorded the proceedings.

1 Witnesses were sworn and testified. Exhibits were admitted. Briefs  
2 were submitted.

3 From testimony heard, exhibits examined and briefs considered,  
4 exceptions received from appellant and in part denied same, the Pollution  
5 Control Hearings Board makes these

6 FINDINGS OF FACT

7 I.

8 Respondent, pursuant to Section 5, chapter 69, Laws of 1974, 3rd  
9 Ex. Sess., has filed with this Board a certified copy of its Regulation I  
10 containing respondent's regulations and amendments thereto.

11 II.

12 Section 1.07 of Regulation I defines "mist" and "any particulate  
13 matter" as air contaminants.

14 Section 9.03 of Regulation I makes it unlawful to cause or allow  
15 the emission for more than three minutes in any one hour of an air  
16 contaminant of greater opacity than 40 percent density.

17 Section 9.09(f) of Regulation I mandates that source sampling of  
18 particulates and gases meet United States Environmental Protection  
19 Agency requirements or procedures adopted by respondent after public  
20 hearing or procedures mutually agreed upon by respondent and the owner  
21 of the equipment to be sampled.

22 Section 3.29 of Regulation I authorizes a civil penalty of not  
23 more than \$250.00 for each violation of Regulation I.

24 III.

25 On December 19, 1973, from the sulfonator stack of appellant's  
26 plant at 5430 W. Marginal Way S.W., Seattle, King County, there were

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1 emitted mist and particulate matter in a residual blue plume greater  
2 in opacity than 40 percent density for ten consecutive minutes. This  
3 emission, witnessed by an inspector on respondent's staff, resulted in  
4 appellant being served by respondent with its Notice of Violation No. 9005,  
5 citing Section 9.03 of Regulation I. In connection therewith, respondent  
6 subsequently served on appellant its Notice of Civil Penalty No. 1324 in  
7 the sum of \$250.00 which is the subject of one of these two appeals.

8 IV.

9 On March 28, 1974, from the sulfonator stack of appellant's plant  
10 at 5430 West Marginal Way S.W., Seattle, King County, there were emitted  
11 mist and particulate matter in a residual blue plume greater in opacity  
12 than 40 percent density for six consecutive minutes. This emission,  
13 witnessed by an inspector on respondent's staff, resulted in appellant  
14 being served by respondent with its Notice of Violation No. 9537,  
15 citing Section 9.03 of Regulation I. In connection therewith, respondent  
16 subsequently served on appellant its Notice of Civil Penalty No. 1482 in  
17 the sum of \$250.00, which is the subject of one of these two appeals.

18 V.

19 When appellant's plant is in "normal" operation, as it was at the  
20 times cited in Notices of Violation Nos. 9005 and 9537, there theoreticall  
21 should be no emission from the sulfonator stack other than uncombined wate  
22 vapor.

23 Whether this actually is the case, was not proven by stack sample  
24 testing as specified in Section 9.09(f) of respondent's Regulation I.  
25 Appellant's own witnesses concede that appellant's scrubber system does  
26 not remove all mist particles and that steam, before being emitted from

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1 the sulfonator stack, nucleates on these particles.

2 VI.

3 Any Conclusion of Law hereinafter stated which is deemed to be a  
4 Finding of Fact is adopted herewith as same.

5 From these Findings, the Pollution Control Hearings Board comes to  
6 these

7 CONCLUSIONS OF LAW

8 I.

9 Respondent, in a civil penalty matter, has the burden of proving a  
10 prima facie case. This has been done in both instant civil penalties by  
11 respondent's inspector who testified as to the amount and time of visual  
12 emissions which he witnessed. His testimony stands uncontroverted.

13 II.

14 At that point, appellant had the burden of going forward, with proof  
15 that no contaminant emissions actually came from appellant's stack when  
16 the plant was operating in "normal" fashion. Appellant has shown to the  
17 satisfaction of this Board that theoretically there should be no  
18 particulate emission from its stack when the plant is in "normal"  
19 operation. However, appellant's testimony concedes that from a practical  
20 standpoint not all mist particles are removed in appellant's scrubbing  
21 process and the steam, before being emitted from the stack, does nucleate  
22 on these particles. Appellant, therefore, has failed, in these two  
23 matters, to meet its burden of proof that no contaminant emissions, such  
24 as water combined with oil, came from its stack.

25 III.

26 This Board, then, must find appellant in violation of Section 9.0.

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1 of respondent's Regulation I as cited in Notices of Violation Nos. 9005  
2 and 9537.

3 IV.

4 The Board, having heard no attack on the reasonableness of the  
5 penalties, finds Notices of Civil Penalties Nos. 1324 and 1482 to be  
6 reasonable.

7 V.

8 The Board will not issue a declaratory order at this time.

9 VI.

10 Any Finding of Fact herein which is deemed to be a Conclusion of  
11 Law is adopted herewith as same.

12 Therefore, the Pollution Control Hearings Board issues this

3 ORDER

14 The appeals are denied and the two civil penalties of \$250.00  
15 each are sustained.

16 DONE at Lacey, Washington this 29<sup>th</sup> day of April, 1975.

17 POLLUTION CONTROL HEARINGS BOARD

18 Chris Smith  
19 CHRIS SMITH, Chairman

20 Walt Woodward  
21 WALT WOODWARD, Member